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Dorinda A. Bradshaw

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TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

IN THE MATTER OF:

COMMUNITY EDUCATIONAL ASSOCIATION  
Holly Hill, Florida

CORNERSTONE COMMUNITY RADIO, INC.  
Flagler Beach, Florida

MM DOCKET NO. 94-88

For a Construction Permit for a  
New Noncommercial Educational FM  
Station on Channel 212A

DATE OF CONFERENCE: September 7, 1994 VOLUME: 1  
PLACE OF CONFERENCE: Washington, D.C. PAGES: 1-15

FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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For a Construction Permit for a New )  
Noncommercial Educational FM )  
Station on Channel 212A )  
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The above-entitled matter came on for conference pursuant to Notice before Judge Joseph Chachkin, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on Wednesday, September 7, 1994, at 9:08 a.m.

**APPEARANCES:**

On behalf of Community Educational Association:  
SCOTT CINNAMON  
Brown, Nietert & Kaufman  
1920 N Street, N.W., Suite 660  
Washington, D.C. 20036

On behalf of Cornerstone Community Radio, Inc.:  
J. GEOFFREY BENTLEY  
Birch, Horton, Bittner & Cherot  
1155 Connecticut Avenue, N.W., Suite 1200  
Washington, D.C. 20036

On behalf of the Mass Media Bureau:  
PAULETTE LUDEN  
2025 M Street, N.W.  
Washington, D.C. 20554

## I N D E X

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Closing Statements By: Judge Chachkin	14
Conference Began: 9:08 a.m.	Conference Ended: 9:38 a.m.

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P R O C E E D I N G S

1 JUDGE CHACHKIN: All right, let's go on the record.  
2  
3 This proceeding concerns applications for a construction  
4 permit for a new noncommercial educational FM station on  
5 Channel 212A. The applicant, Community Education Association,  
6 seeks to build its facilities and serve Holly Hill, Florida.  
7 Cornerstone Community Radio, Inc., seeks to serve Flagler  
8 Beach, Florida. May I have the appearances on behalf of the  
9 parties? On behalf of Community Educational Association?

10 MR. CINNAMON: Your Honor, Scott Cinnamon from the  
11 law firm Brown, Nietert and Kaufman.

12 MR. CINNAMON: On behalf of Cornerstone Community  
13 Radio, Inc.?

14 MR. BENTLEY: J. Geoffrey Bentley of the law firm of  
15 Birch, Horton, Bittner and Cherot. With me is my associate  
16 Anne E. McInerney.

17 MR. CINNAMON: And on behalf of the Chief, Mass  
18 Media Bureau?

19 MS. LUDEN: Paulette Luden.

20 MR. CINNAMON: I received the petition for relief to  
21 amend from Community which seeks to file a post-designation  
22 engineering amendment which alleges will eliminate the  
23 exclusivity, mutual exclusivity, between the applications.  
24 Community Educational Association proposes to change  
25 frequencies -- change channel, and also move its transmitter

1 site. Am I correct?

2 MR. CINNAMON: Yes, Your Honor.

3 JUDGE CHACHKIN: I assume the Bureau has not had an  
4 opportunity to review the document because of --

5 MS. LUDEN: We've done the engineering review. Our  
6 comments are due September the 9th, but it looks as if --  
7 they're drawn -- it, it does confirm with the technical  
8 standards and it will eliminate the mutual exclusivity.

9 JUDGE CHACHKIN: I assume Cornerstone is not going  
10 to oppose the, the amendment?

11 MR. BENTLEY: We do not oppose that amendment,  
12 Your Honor.

13 JUDGE CHACHKIN: Does anyone object to Cornerstone's  
14 petition for relief to amend?

15 MR. CINNAMON: No, Your Honor.

16 JUDGE CHACHKIN: Well, Cornerstone's petition for  
17 relief to amend which was filed August 26th, 1994, proposes to  
18 inform the Commission of changes in information on file  
19 regarding other stations in which Cornerstone transmitters  
20 have a -- interest. The petition was filed to comply with  
21 Sections 165 and 73.3514 of the Rules. The changes reported  
22 would reflect the assignment of a license for WJLU Grand FM,  
23 New Smyrna Beach, Florida, on July 15th, 1994, to Cornerstone  
24 Broadcasting Corporation which is a nonstop, not-for-profit  
25 corporation of which Richard L. Van Zandt, Robert M. Weeks,

1 and William R. Reed, II, are directors representing 43.9  
2 percent of the voting interest. It also reports the grant of  
3 Cornerstone Community Radio, Inc.'s, application for a  
4 construction permit for a new noncommercial educational FM  
5 broadcast station, Idlewood, Illinois, on August 3rd, 1993;  
6 the grant of Cornerstone's application for a construction  
7 permit for a new noncommercial educational FM broadcast  
8 station at Springfield, Illinois, on April 22nd, 1994; and the  
9 grant of Cornerstone's application for a construction permit  
10 for a new noncommercial educational FM broadcast station at  
11 St. Joseph, Illinois, on May 9th, 1994.

12           The petition, which is unopposed, will be granted.  
13 The amendment accepted. I also have another petition for  
14 relief to amend filed by Community Educational Association,  
15 and this deals with the issue designated by the Commission as  
16 to whether Community Educational Association is a qualified  
17 educational organization pursuant to 47 CFR 73.503(a). Did  
18 the Bureau have a chance to review this document?

19           MS. LUDEN: Your Honor, until this moment, I wasn't  
20 aware of that petition for relief to amend. The only petition  
21 for relief to amend that I have referring to Community  
22 Educational Association is the engineering amendment filed  
23 August 30th.

24           JUDGE CHACHKIN: Well, the petition recites that  
25 assuming acceptance of the amendment does -- Community

1 Educational Association plans to seek summary decision on the  
2 Section 73.503(a) issue. And while I don't want to indicate  
3 at this point what my position will be, it does appear to me,  
4 however, that what Community Educational Association, what  
5 they filed, they filed a organization and board of directors  
6 agreement. And looking at the agreement, at least in my eyes,  
7 it doesn't appear to me that the ball has been advanced very  
8 much.

9 MS. LUDEN: Your Honor, I -- Does Your Honor have  
10 that as part of the August 30th engineering amendment? I  
11 don't see --

12 JUDGE CHACHKIN: No, no. It was a separate petition  
13 for relief to amend filed September 2nd.

14 MR. CINNAMON: Your Honor, I'll lend Ms. Luden my  
15 copy.

16 MS. LUDEN: I have not reviewed this, Your Honor.  
17 Thank you.

18 JUDGE CHACHKIN: Do you want a chance to look at it,  
19 Ms. Luden? We can go off the record for a moment.

20 MS. LUDEN: No, Your Honor, because I would like to  
21 consult with the -- Branch on this particular amendment, in  
22 any event.

23 JUDGE CHACHKIN: All right. I, I just want to  
24 indicate that -- And, of course, I have to -- I'll wait and  
25 see what the Bureau has to say, but the designation order

1 indicates that its concern was that all, all that CEA had  
2 indicated was, Community Educational Association indicated was  
3 that the station will be used for the advancement -- organized  
4 for educational, charitable, literary and scientific purposes.  
5 And my review of the agreement indicates that basically,  
6 although a lot more words are said here, that's all that we  
7 have now, namely, that that's the purpose for the  
8 organization.

9           Whether that satisfies the Rules or not, is another  
10 question. There's no showing here of how it's going to serve  
11 any educational institutions, provide programmings, provide  
12 educational programs to any educational institution. So, I  
13 mean, I, I haven't started to begin to research cases in this  
14 area, but I don't -- And I'm only bringing this up because the  
15 indication is that if this amendment is accepted that a motion  
16 for summary decision is going to be filed.

17           And at this point, I don't see how filing this  
18 document is going to warrant the grant of a motion for summary  
19 decision. However, I'll wait for the Bureau to state their  
20 comments, since it seems to me that -- And I say my brief  
21 review of the Rule doesn't seem to me that there's much more  
22 been said about how exactly this is going to serve as an  
23 educational institution. What educational purposes are going  
24 to be served by this station?

25           In fact, the issue is -- the issue added by -- in



1 the HDO says "determine whether CEA is a qualified educational  
2 organization proposing an acceptable educational format."  
3 That's the language.

4 MR. CINNAMON: That's correct.

5 JUDGE CHACHKIN: In compliance with 47 CFR  
6 Section 73.503(a) of the Commission's Rules. And there's  
7 nothing in the agreement which sets forth what its educational  
8 format is going to be.

9 MR. CINNAMON: Your Honor, the, the case that the FM  
10 Branch has used when it makes decisions out of hearing on  
11 whether -- When these applications are singletons, the case  
12 that it uses is the Moody Bible Institute case which basically  
13 stands for the proposition that a detailed programming format  
14 does not have to accompany an application, just so long as  
15 there's a representation that the guidelines set forth as  
16 correct ratios will be adhered to by the proponent. So --

17 JUDGE CHACHKIN: But we have an issue here now.  
18 We're no longer dealing with the singleton. So I don't know  
19 what the staff does, but I have an issue here which has to be  
20 resolved, and the issue will have to be resolved on the basis  
21 of Commission precedent, dealing with -- issue. Now, that,  
22 that's not the same thing as what the staff does necessarily.

23 MR. CINNAMON: Right. But I, I, I would, I would  
24 suggest that the Moody Bible Institute case, which was decided  
25 by the Commission, sets forth the proposition that a detailed

1 programming schedule of every day's programming does not have  
2 to be included in an application in order for an application  
3 to pass as, as an educational format.

4 JUDGE CHACHKIN: Well, that may be so, but you  
5 haven't provided a detailed, or even any kind of information  
6 exactly as to what educational format you're going to provide.  
7 There's nothing in your, in your agreement which sets forth  
8 any information as to educational format, detailed or  
9 otherwise.

10 MR. CINNAMON: Well, in, in the application  
11 itself --

12 JUDGE CHACHKIN: So whether it even satisfies Moody,  
13 I don't know.

14 MR. CINNAMON: In the application itself, in  
15 Exhibit 2 of the application, we recite that the percentage of  
16 time dedicated to news, public affairs, and educational  
17 instructional programming will compare favorably with the  
18 guidelines established by the FCC in the Moody Bible Institute  
19 case.

20 JUDGE CHACHKIN: Well, that says nothing. I mean,  
21 your interpretation of what -- whether it will satisfy Moody  
22 or not is, is subjective. It doesn't provide any objective  
23 criteria to determine whether in fact you do satisfy Moody or  
24 not. And I don't know too much about that case, but I don't  
25 see how a statement of that nature satisfies the issue that's

1 | been added. Of course, I'll wait for the Bureau to respond,  
2 | but I'm telling you right now I have some difficulty if you  
3 | think you can get a motion of summary decision granted on the  
4 | basis of this general statement. I think more is required.

5 |           But as you say, I haven't looked at Moody and I  
6 | haven't looked at any other cases there may be, so my  
7 | determination, final determination, will be based on, after  
8 | review, what the Bureau submits and after my review of the  
9 | cases. And I hope in your motion for summary decision,  
10 | assuming your amendment is accepted, that you demonstrate for  
11 | me that the cases support your position that such general  
12 | information is sufficient.

13 |           In any event, I assume review of the engineering  
14 | amendment that there's been no discussion of any discovery or  
15 | anything of that nature between the parties. Mr. Bentley, is  
16 | that --

17 |           MR. BENTLEY: Your Honor, I think it would be  
18 | appropriate if you would orally order a suspension of further  
19 | procedural dates pending a ruling on the acceptability of the  
20 | engineering. I will also confess that I am in something of a  
21 | quandary. Cornerstone has absolutely no reason to believe  
22 | that the engineering amendment is not acceptable. On the  
23 | other hand, against the possibility that the engineering  
24 | amendment might be deemed not acceptable or might be opposed,  
25 | we do not want to waive any rights with respect to the

1 September 2nd motion for relief to amend.

2 In an endeavor not to waste our resources and  
3 resources of the court in filing an opposition of our comments  
4 concerning that --

5 JUDGE CHACHKIN: Which amendment are you talking  
6 about?

7 MR. CINNAMON: The programming amendment.

8 JUDGE CHACHKIN: Programming?

9 MR. BENTLEY: The organizational amendment. And I  
10 would, I would --

11 JUDGE CHACHKIN: Well, the Bureau has indicated that  
12 they're going to file something by the 9th. Is that correct?

13 MS. LUDEN: On the engineering amendment.

14 JUDGE CHACHKIN: On the engineering amendment.  
15 Which is Friday. When is the petition for relief to amend to  
16 be responded to? The one dealing with the educational.

17 MR. BENTLEY: I think it would be the 15th,  
18 Your Honor.

19 JUDGE CHACHKIN: Well, then you have plenty of time  
20 to see what the Bureau files. The Bureau's indicated they're  
21 going to support it, which -- If that's the case, I assume  
22 that you have no interest in supporting or opposing the --

23 MR. BENTLEY: Only against the possibility, as I  
24 said, Your Honor, that even with the Bureau's support you  
25 might determine that the amendment is not permitted by

1 Section 73.3522(b).

2 JUDGE CHACHKIN: You're talking about the  
3 engineering amendment?

4 MR. BENTLEY: The engineering amendment.

5 JUDGE CHACHKIN: Why, why do you feel --

6 MR. BENTLEY: I'm not, I'm not encouraging this  
7 course of action, Your Honor --

8 JUDGE CHACHKIN: Well --

9 MR. BENTLEY: -- but, you know, the, the authority  
10 of the Administrative Law Judge is to approve amendments such  
11 as this without returning the applications to the processing  
12 line. It is something that has been assumed and, as to my  
13 knowledge, not the subject of a final ruling by the Review  
14 Board or by the Commission itself.

15 MS. LUDEN: Well, excuse me, Your Honor. I disagree  
16 with that. In the Marco (phonetic sp.) case, the Commission  
17 ruled that post-designation amendments were not subject to the  
18 major change rules which are only -- which only apply to  
19 predesignation amendments. I don't have the citation with me,  
20 but I'll be glad to give it to Mr. Bentley. The Commission  
21 has ruled on that.

22 MR. BENTLEY: Well, I had -- I take that from, from  
23 Your Honor's comments that, that you expect to grant -- to  
24 approve this amendment, to accept this amendment, based on the  
25 Bureau's recommendation. So I have no further comments.

1 JUDGE CHACHKIN: Well, I thought in the case of  
2 noncommercial state applications that the, that the Commission  
3 has allowed the applicants to move to another frequency to  
4 resolve a situation like this, where there's mutual  
5 exclusivity. Am I wrong?

6 MS. LUDEN: No, Your Honor. In fact, we've allowed  
7 it. We have been doing it for years in, in all types of  
8 cases. We have been allowing amendments to specify new  
9 channels because post-designation amendments are not returned  
10 to the processing line. We process them in the Bureau. We  
11 give our recommendations to Your Honor and Your Honor accepts  
12 it. And once it's accepted, it's accepted. We have been  
13 finding good cause in cases such as this where acceptance of  
14 the amendment will be result in mutual exclusivity and would  
15 eventually lead to the grant of both applications that -- we  
16 have certainly found that in the public interest.

17 JUDGE CHACHKIN: That's been my impression of what  
18 the case -- what the Commission -- the position of the  
19 Commission, at least in recent history. So my inclination is,  
20 and I assume the Bureau will cite precedent for this, to, to  
21 grant the engineering amendment. So once I've done that, I  
22 assume -- Would it be appropriate for me then to sever the  
23 application, grant the -- Cornerstone's application or would I  
24 need a further pleading?

25 MS. LUDEN: Your Honor, I believe that you can at

1 that point, since the applications are not mutually exclusive,  
2 you can grant the Cornerstone application. And the Community  
3 Educational Association application would continue in hearing  
4 status, perhaps with a view towards resolving the issues by  
5 summary decision. However, I, I hear from counsel for  
6 Cornerstone Community Radio, Inc., that, that perhaps they're  
7 not ready to proceed to a grant or, or have -- to oppose this  
8 amendment.

9 And so I had assumed that they would -- that they  
10 were agreeable to the procedure. At this point, I'm a little  
11 bit reluctant to say that you should do that when, without  
12 finding out what Cornerstone Community Radio, Inc., thinks.

13 MR. BENTLEY: Well, we have, we have no interest in  
14 anything except a grant of the Cornerstone application. And  
15 that the course that Your Honor has indicated that you will  
16 take would be entirely appropriate from our point of view.

17 JUDGE CHACHKIN: Now, the question is does the  
18 Bureau intend to conduct any discovery with respect to the  
19 issues added against Community Educational Association?

20 MS. LUDEN: No, Your Honor. We have been talking  
21 informally about resolving those issues. And I know that  
22 Mr. Cinnamon has talked to people in the FM Branch who are  
23 more or less experts on, on this issue. We have been talking  
24 a lot about it, back and forth. I have not seen the amendment  
25 itself, but we have talked about it. It's our view that both

1 | issues -- There's also an FAA issue. It's our view that both  
2 | issues are appropriate for resolution by summary decision, at  
3 | least before we set a hearing date. But if they can't be  
4 | resolved by summary decision, then we're prepared to go to  
5 | hearing.

6 | JUDGE CHACHKIN: Well, we do have an existing  
7 | hearing date which has been established, and it's my intention  
8 | to keep that hearing date. And assuming -- Well, the hearing  
9 | date is, is in December, so there's plenty of time to either  
10 | resolve it by summary decision or a determination be made that  
11 | summary decision is not appropriate and we need the hearing.  
12 | As far as the October 25th date, obviously, if the engineering  
13 | situation is resolved, there's no longer mutual exclusivity,  
14 | then we don't have to worry about that date.

15 | As far as November 4th, all the other dates will  
16 | stay as they are and the Bureau can either conduct discovery  
17 | during that time period or not. And as far as I see it, I see  
18 | no need to change any of the procedural dates.

19 | MR. CINNAMON: That's fine, Your Honor.

20 | JUDGE CHACHKIN: And I granted the one petition for  
21 | relief to amend filed by Cornerstone Community Radio, Inc. As  
22 | far as the other two petitions, I will wait and see what's  
23 | filed by the Bureau. If there's anything else to be  
24 | discussed, if not, we can recess this prehearing conference.

25 | (Whereupon, at 9:38 a.m., the conference was concluded.)



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IN RE APPLICATIONS OF HOLLY HILL, FL.

**Name**

MM DOCKET NO. 94-88

**Docket No.**

WASHINGTON, D.C.

**Place**

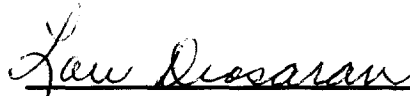
September 7, 1994

**Date**

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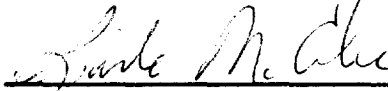
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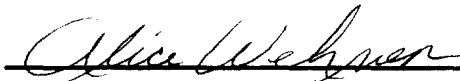
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